

No. 11,981

IN THE
United States Court of Appeals
For the Ninth Circuit

LAWRENCE JAMES CONLEY,	}	<i>Appellant,</i>
VS.		
UNITED STATES OF AMERICA,		

BRIEF FOR APPELLEE.

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BRIEF FOR APPELLEE.

Appeal from a judgment and order made by the United States District Court for the Northern Division of the Northern District of California, sentencing appellant for violation of Title 18, U.S.C.A., 76, the impersonation of a United States Naval Officer. The Court ordered that appellant be imprisoned for a period of eighteen months and judgment was entered accordingly.

THE INDICTMENT.

The indictment charges the defendant, Lawrence James Conley, in one count as follows:

That on or about the 17th day of April, 1948, at Sacramento, in the County of Sacramento, State of California, in said Division and District and within

the jurisdiction of this Court, with intent to defraud one Rev. Rex Barron, Lawrence James Conley did unlawfully, wilfully and feloniously, falsely assume and pretend to be an officer of a department of the United States, to-wit: the United States Navy, acting under the authority of said United States Navy, to-wit: A lieutenant commander in the United States Navy, and in such pretended character did unlawfully, wilfully and feloniously obtain from said Rev. Rex Barron the sum of Ten Dollars (\$10.00) good and lawful money of the United States.

18 USCA Section 76.

APPELLANT'S ASSIGNMENT OF ERROR.

Appellant assigns the following as constituting error in the trial of the case:

- 1 That certain evidence introduced in the trial was illegally obtained.
 2. In general, that improper conduct on the part of the officers of the Government and the Court has resulted in a denial of due process of law in connection with the prosecution and resulting conviction of appellant.
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FACTS OF THE CASE.

The circumstances concerning the particular charge, impersonation of a United States Naval Officer, for which appellant stood trial and which resulted in a

verdict of guilty returned by the jury in the case, are as follows:

At approximately 11:00 A.M. on the morning of April 17, 1948, the defendant while attired in the full uniform designating the rank of Lieutenant Commander in the United States Navy, called at the office of a Reverend Rex A. Barron, a minister of the Episcopal church located in the City of Sacramento, and at such time introduced himself to the Reverend as a Lieutenant Commander in the United States Navy, giving his station as Fresno, California, in the 12th Naval District. In connection with the introduction, the appellant tendered a card to the Reverend which set forth that the bearer was a "Harry E. Tomlin, Lieutenant Commander, U.S.N.; Public Relations Officer, 12th Naval District, Fresno, California. (Tr. page 16.) The appellant then stated to the Reverend that he was in a bad situation in that he was due back at his Navy base and was presently financially embarrassed. The appellant further indicated that assistance was desired for the purpose of returning to his Navy base.

In connection with the financial difficulties it was stated to Reverend Barron by the appellant that appellant had lost his wallet the prior evening while staying at a local hotel. (Tr. page 27.) In this connection, it was stated that he, the appellant, had awakened that morning (April 17, 1948) to discover his wallet and his money gone (Tr. page 27), and that his failure to promptly return to Fresno would result in his "absent without leave." (Tr. page 27.)

The Reverend then believing that appellant was as stated, a Lieutenant Commander in the United States Navy and also believing the story related by appellant, sympathized with the appellant for the apparent situation which existed. The Reverend stated at that time that he did not have any cash upon his (the Reverend's) person but that he did have a check payable to him (Rev. Barron) which he would endorse and give to appellant for the purpose of aiding the appellant in returning to his base. (Tr. page 19.) The Reverend then did endorse the check in the amount of \$10.00 and turned it over to the appellant and the appellant accepted such check at that time. The Reverend then directed the appellant to go to a nearby drug store for the purpose of cashing and receiving the face value of said check. Also, the Reverend called the drug store and spoke to a Mr. Higgs with whom he was acquainted requesting that Mr. Higgs cash the check upon presentation by the appellant. (Tr. page 20.) The appellant then proceeded to the drug store referred to, presented the check in the amount of \$10.00, and received in turn that amount of money which was handed to him by Mr. Higgs. (Tr. page 32.)

The circumstances further disclosed that there was no such individual by the name of Harry Tomlin listed in the records for either the 12th Naval District or the United States Navy, as an officer. (Tr. pages 29-30.) It was also disclosed that the clothing or uniform worn by appellant on April 17, 1948, constituted the complete attire symbolic of the uniform of a Lieutenant Commander in the United States Navy. The

appellant was also fully attired in such uniform at the time he was taken into custody on the evening of April 21, 1948, at the Sacramento Hotel where appellant had rented a room.

Appellant went to trial on the above charge set forth in the indictment on May 21, 1948, and after presentation of evidence as outlined was found guilty as charged by a verdict returned on that date by a trial jury. On June 4, 1948, the defendant appeared in Court *in propria persona* having theretofore and on May 11, 1948, waived the right to be represented by counsel and was sentenced by the Court to the federal penitentiary for a period of eighteen (18) months.

ARGUMENT.

It is respectfully submitted that a review of the Transcript of Record in this case will disclose no denial of due process to appellant in connection with the prosecution and resultant conviction. To the contrary it is submitted that from the time appellant first appeared in Court for arraignment up until the time of his final appearance on June 4, his constitutional rights were fully protected and that in addition thereto he was given every courtesy both by members of the Federal Bureau of Investigation and the United States Marshal's Office as well as by the officers of the Court. The appellant appeared in Court on May 11th and after having been informed that he was entitled to be represented by counsel appointed by

the Court stated that he did not wish such representation and desired to proceed in his own behalf. There can be no claim and none is presented to the effect that any rights of the appellant were prejudiced in this respect. Also, an examination of the Transcript of Record will disclose that during the actual trial of the case and presentation of the evidence the Court was most zealous in protecting the rights of appellant pertaining to the admissibility of evidence. (Tr. pages 40, 43.)

It is further submitted that the evidence in support of the judgment in the instant case, to-wit: impersonation of a United States Naval officer, is more than adequate by consideration of Reverend Rex Barron's testimony standing alone. As heretofore set forth, the Reverend has unqualifiedly testified that appellant came to him dressed as a Naval officer and after stating that he was such an individual obtained "something of value" by the exercise of deceit and fraud in the relating of a hard-luck story. It would appear that the actions and conduct on the part of the appellant satisfy every element required by the provisions of Section 76, Title 18, so far as constituting a violation. It is not believed that further language should be devoted to the matter of law so far as the discussion of conduct constituting fraud. It is a well established rule of law that the "intent to defraud" may flow from the actions and conduct of a party without the requirement of the spoken word. The element of intent to defraud which is a necessary matter of proof in so far as violation of Section 76, Title 18, is concerned

is fully disclosed by the very conduct of appellant in and of itself. The case of *U. S. v. Lepowitch*, Mo. 1943, 63 S. Ct. 914, 318 U. S. 702, 87 L. Ed. 1091, rehearing denied, 63 S. Ct. 1171, 319 U. S. 783, 87 L. Ed 1727, fully supports the position of the Government as applied to the circumstances of the instant case.

Reference to Reverend Barron's testimony (Tr. page 25) discloses beyond any question that at the time the Reverend turned the \$10.00 check over to appellant he did so upon the importuning of appellant and believing appellant to be an officer in the United States Navy and that he needed the money to return to his Navy base.

The testimony of other witnesses above referred to supplies the proof that appellant was not on April 17, 1948, an officer in the United States Navy or even a member of such Government installation.

The Government has purposely refrained up to this point in commenting on other matters set forth in appellant's brief as it is believed that those matters have no proper place in connection with the present appeal. However, in such regard it might be stated that it is true that appellant was originally charged with a misdemeanor, to-wit: violation of Title 10, Section 1393, the illegal wearing of a uniform. The U. S. Commissioner's complaint in this regard was filed on April 22, 1948, the morning after the arrest of appellant and at that time the circumstances concerning his activities with Rev. Barron had not been brought to the attention of the Federal Bureau of Investigation. At

the time of the hearing before the United States Commissioner and after having been informed of the charge against him the appellant indicated a desire to go into Court and enter a plea of guilty. In passing it might be stated that at the time of the hearing before the Commissioner, the appellant was still attired in the uniform of a Lieutenant Commander in the Navy.

A day or so subsequent thereto it was determined that appellant had procured the sum of money from Reverend Barron and it was deemed he was guilty of an additional violation, to-wit: impersonation of a United States Naval Officer. Appellant was given a hearing before the Commissioner on this subsequent charge and again indicated his desire to enter a plea of guilty by waiving the right to have his case presented to the Federal Grand Jury and by entering a plea of guilty to an information.

On April 28, 1948, the Court appointed Mr. Daniel Dennis to represent appellant in connection with this subsequent charge and after consultation with appellant Mr. Dennis appeared in Court with appellant on this same date and stated that appellant appeared reluctant to further proceed or enter a plea of guilty at that time. The Court thereupon directed the Government to present the matter to the Federal Grand Jury which was done and on May 21, 1948, the Federal Grand Jury for this Division returned an indictment against appellant as above set forth. It was thereafter, and on May 11, 1948, that appellant indicated his desire to proceed *in propria persona* and at that

time entered a plea of not guilty. The case went to trial on May 21 and resulted in a verdict of guilty as above indicated. The appellant did not at any time make any complaint to this Government representative concerning any heart condition and/or need for medical attention and did not at any time in open court or elsewhere make any such request as set forth in appellant's brief.

It should be further stated in connection with appellant's claims of improper treatment on the part of Special Agents of the Federal Bureau of Investigation that the questioning of appellant by such agents on the evening of April 21st was prolonged by appellant's statements to such officers at the time of his arrest. In this regard appellant volunteered information to such agents stating that he, the appellant, had been in company with one Lloyd Sampsell during the period of time from March 25, 1948, and up until the evening of his arrest on April 21, 1948. The individual Lloyd Sampsell referred to by appellant was on the evening of April 21 and is at the present time a federal fugitive from justice on a warrant issued out of the Southern District of California for the crime of murder alleged to have been committed in connection with the robbery of the Seaboard Finance Company, San Diego, California. For this reason the arresting agents did question appellant seeking to gain information as to the then present location of the said Lloyd Sampsell. Any statements made by him at said time were entirely voluntary. There was no brutal or severe questioning by any government agent or any one else.

After the interrogation had proceeded for some period of time the appellant then informed the agents that he was just "building up a good story," and further investigation by the Federal Bureau of Investigation disclosed that appellant's statement in regard to Lloyd Sampsell had been a pure fabrication.

There was not at any time during the interrogation above referred to any brutality, duress, or coercion employed in any manner whatsoever by the members of the Federal Bureau of Investigation, and it is submitted that appellant at no time up until the preparation of his brief so indicated any improper treatment to the Court, to his attorney that represented him for a brief period, or to any other person.

Reference to the transcript (Tr. page 50) will disclose that the only firearm exhibited to appellant was one in the hand of Corporal Leslie Covack, a member of the Army Military Police, and was used by such officer to prevent the escape of appellant at the time of his original arrest. No members of the Federal Bureau of Investigation were present at this time but arrived at the Sacramento Hotel subsequent to and after having received a call from the military authorities.

The agents of the Federal Bureau of Investigation have further informed this representative of the Government that on the evening of the arrest it was noticed that appellant's ankles appeared to be swollen and that he was asked if he desired the attention of a doctor. Appellant replied stating that the condition of the ankles had existed for some time and that the at-

tentions of a doctor was not desired. Again it is pointed out that appellant did not at any time make any complaint in this respect to the Court or to any of the officers of the Government including members of the U. S. Marshal's Office under whose custody he was placed.

As stated, although it is appreciated that the matters above set forth are not in issue in so far as the present appeal is concerned, it is nevertheless believed that there is an obligation on the part of this Government representative to defend the organization of the Federal Bureau of Investigation and the members thereof, when an attack such as has been made by appellant has been directed against such government department alleging the use of improper and vicious methods in the enforcement of the law. It is submitted that there is no basis whatsoever nor any evidence to support the untruths set forth by appellant.

It is respectfully submitted that at no time from the date of appellant's arrest on April 21 and up until his final appearance in Court on June 4, 1948, was there any action or conduct on the part of any Government representative resulting in a denial of due process of law or effecting any unfair prejudice as to the rights of appellant in connection with the prosecution of instant case. The evidence is overwhelmingly in support of the verdict as returned by the jury.

CONCLUSION.

It is submitted that the judgment should be affirmed.

Dated, Sacramento, California,
October 20, 1948.

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